

REMARKS/ARGUMENTS

Reconsideration and allowance of the present application based on the following remarks are respectfully requested. Claim 1 has been amended. Support for the amendments may be found throughout the specification. No new matter has been added as a consequence of these amendments.

Claims 1-9, 11 and 13-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over WO 2000/071623 ("Kessell '623") and Cosmetic and Toiletry Formulations 2001, 2nd edition ("Flick"). For at least the following reasons, the claims are believed to be patentable over the cited reference.

Applicants reassert all the arguments that were presented in the Response and Amendment filed on December 27, 2010.

In addition, Applicants point out that the present rejection is built on a foundation of confusion. The confusion involves the siloxane fluid dispersing *medium* of Kessell '623 with the siloxane dispersing *agent* of Kessell '623. Specifically, the pending rejection asserts that Kessell '623 teaches that "any" siloxane can be used – trying to suggest that any siloxane dispersing agent may be used (see present Final Official Action at page 7). However, Applicants respectfully point out that the term "any" in Kessell '623 was not in reference to the siloxane dispersing *agent*, but rather the siloxane fluid dispersing *medium*:

The metal oxide used in the dispersion of the invention is dispersed in a *siloxane fluid dispersing medium*. Any suitable siloxane *fluid* can be used, a principal requirement being cosmetic acceptability.

See Kessell '623 at page 4, lines 22-24 (*emphasis added*).

The very next three paragraphs in Kessell '623 discuss the specifics of the siloxane dispersing agent (see Kessell '623 at page 5, lines 1-20), and distinction between the dispersing medium and the dispersing agent is made even more apparent when one considers the following discussion in Kessell '623:

Preferably, for maximum flexibility of use, the dispersion consists essentially of the specified ingredients (particles of hydrophobic metal oxide, siloxane fluid *dispersing medium* **and** polyalkylene oxide/polyalkylsiloxane copolymer *dispersing agent*). .

See Kessell '623 at page 5, lines 23-25 (*emphasis added*).

In view of the above-noted distinctions in Kessell '623 between the dispersing medium and the dispersing agent, Applicants submit that the term "any" can only be applied to the siloxane fluid dispersing medium and not the specified siloxane dispersing agent. Accordingly, one skilled in the art, upon reading Kessell '623, would not substitute the dispersing agent as the Examiner has asserted, but rather would only consider alternative siloxane fluid mediums.

Finally, in regards to the rejection's justification of combining Kessell '623 with Flick, asserting that they are "used for same purpose," Applicants fail to see how an after-sun formulation is used for the same purpose as a sunscreen formulation (*i.e.*, used before and while in the sun). Accordingly, Applicants submit that pending rejection fails to provide the necessary motivation to combine, and as such, the Examiner has failed to present a prima facie case of obviousness. Therefore, the pending claims are believed to be patentable over the cited art.

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

JONES DAY

By: Paul L. Sharer
Paul L. Sharer
Registration No. 36,004
Direct No. (202) 879-5481

Intellectual Property Group
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939 Telephone
(202) 626-1700 Facsimile

Date: January 27, 2011